Filed 1/23/19 R.K. v. Superior Court CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

R.K., Petitioner, v. THE SUPERIOR COURT OF SANTA CRUZ COUNTY, Respondent; SANTA CRUZ COUNTY HUMAN SERVICES DEPARTMENT, Real Party in Interest.	H046371 (Santa Cruz County Super. Ct. No. 16JU00300)

In September 2016, the Santa Cruz County Human Services Department (Department) filed a petition under Welfare and Institutions Code[1] section 300, subdivisions (b)(1) and (j) relative to an infant boy, D.L. (the minor). The Department alleged that the mother, R.K. (mother), and the father, D.L. (father), had a history of substance abuse. Mother had used methamphetamine, marijuana, and nonprescribed valium during her pregnancy, and the minor was born with controlled substances in his

[1] Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

system. The toxicology report indicated that the minor had tested positive for amphetamine, methamphetamine, and diazepam (valium). The minor was cared for in the neonatal intensive care unit of the hospital for 15 days until his discharge. The Department reported that "[a]s a newborn, [the minor] required oxygen, medication, and a feeding tube in order to survive."

The Department removed the minor from the custody of mother and father (collectively, parents) and he was placed in a foster home with D.C. and B.C. (hereafter sometimes referred to collectively as de facto parents). The minor remained in de facto parents' home for the next 19 months.

The juvenile court sustained the allegations of the petition in November 2016 and ordered that parents receive family reunification services and supervised visitation. Father's services were terminated at the 12-month review hearing in November 2017. At the same hearing, mother had her services extended by the court. And at the 18-month review hearing in April 2018, the court returned the minor to mother's custody and care, with the Department providing family maintenance services.

On September 4, 2018, mother relapsed. On the evening of September 5 in Capitola, mother attempted to evade police by running with the minor in her arms. She tripped down the stairs of a theater, falling with the minor in her arms. According to her statement to the police, mother had taken " 'a large amount of methamphetamine' " on September 4. Mother was arrested on charges of willful cruelty to a child and was taken into custody. The minor was placed into protective custody and was returned to live with D.C. and B.C.

The Department on September 7, 2018, filed a supplemental petition pursuant to section 387, subdivision (a). In a subsequent report, the Department recommended that (1) the minor remain in out-of-home placement, (2) services not be offered to the parents, and (3) the court schedule a selection and implementation hearing pursuant to section 366.26 (hereafter 366.26 hearing). After a contested hearing on October 31,

2018, the court found true the allegations of the petition and adopted the recommendations of the Department, scheduling a 366.26 hearing for January 29, 2019.

Mother filed a petition for extraordinary writ to compel respondent superior court to vacate its order sustaining the allegations of the supplemental petition, removing the minor from her custody and care, and setting a 366.26 hearing. Mother contends the juvenile court erred because she had shown herself to be a good mother, had continued to address problems related to her drug dependency, and had "exceeded the expectations of [her] case plan." We conclude that respondent court did not err, and we will therefore deny the petition.

I. FACTS AND PROCEDURAL HISTORY[2]

A. Petition and Detention Order (September 2016)

On September 26, 2016, the Department filed a petition on behalf of the minor under subdivisions (b)(1) and (j) of section 300. The Department alleged in the petition, as amended in November 2016, under subdivision (b)(1) of section 300, that the minor was at substantial risk of suffering severe emotional damage due to (1) mother's history of abuse of controlled substances, including benzodiazepines, methamphetamine, and marijuana, and (2) father's history of abuse of controlled substances, including methamphetamine, marijuana, and hallucinogens.

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[2] Five appeals and writ proceedings (including the present matter) arising out of this dependency proceeding have at some time been pending in this court. We take judicial notice of the record and of the opinion filed in one of those appeals, *In re D.L.* (*In re D.L.* (June 28, 2018, H045306) [nonpub. opn.]). (Evid. Code, §§ 452, subd. (d), 459, subd. (a); see also *ZF Micro Devices, Inc. v. TAT Capital Partners, Ltd.* (2016) 5 Cal.App.5th 69, 73, fn. 3.) We will utilize a significant portion of the factual and procedural discussion in that appeal in our recitation of the factual and procedural background herein. Additionally, we take judicial notice of the record filed in another related appeal (*In re D.L.*, dismissed at appellants' request Sept. 11, 2018, H045491), which includes procedural matters not disclosed in the record filed in the instant writ proceeding.

Mother used methamphetamine, marijuana, and nonprescribed valium while pregnant with the minor. She reported that she had used methamphetamine every few days throughout her pregnancy, and that she had "last used methamphetamine and valium 'a few days' before she gave birth to her son." The minor was born with controlled substances in his system and was suffering from withdrawal symptoms that included respiratory distress and an inability to take food. He was placed in the hospital's neonatal intensive care unit. After giving birth to the minor, mother tested positive for benzodiazepine, amphetamines, and cannaboids. Two days after the minor was born, mother left the hospital against medical advice. She later reported that she had done so because she " 'wanted to use [drugs].' "

Mother reported that she was homeless and camping in the Santa Cruz area. She stated that father had been incarcerated during the majority of her pregnancy. Neither mother nor father was employed or had a car. The Department advised: "The mother and father reported that they do not have and have not made a plan for adequate housing, clothing, or resources to care for [the minor] upon his discharge from Dominican Hospital NICU."

Father used controlled substances with mother while she was pregnant with the minor. Father was homeless at the time of the petition's filing, supported himself through the commission of criminal acts, and was a registered sex offender.

The Department alleged further that, under subdivision (j) of section 300, mother's older child (the minor's half-sibling), C.K., was previously abused or neglected within the meaning of section 300; C.K. was adjudicated a dependent child by the Santa Cruz County Superior Court (juvenile court) in September 2009. The dependency arose out of an incident in May 2009 in which mother was arrested for child endangerment, resisting arrest, assaulting a police officer, and driving under the influence. Mother—who was intoxicated with a blood-alcohol level of 0.105 percent and admitted that she had taken Vicodin while drinking heavily at a restaurant—had driven away from the restaurant after

an altercation with the manager. C.K. (then approximately three years old) was with mother and unrestrained in the front seat. "[M]other resisted arrest and was physically removed from her car by police in front of her daughter[,] who was reported to be crying and visibly shaking." Mother was provided with court-ordered services. There were allegations against mother of substance abuse, including marijuana and prescription medications, in the prior dependency proceeding.[3] Ultimately, in April 2014, the superior court (family court) awarded sole legal and physical custody of C.K. to her father.

The Department reported that mother had a criminal history that consisted of (1) a 2009 conviction for resisting or obstructing a peace officer (Pen. Code, § 148, subd. (a)); (2) a 2009 conviction for driving while under the influence of alcohol or drugs (Veh. Code, § 23152, subd. (a)); (3) an arrest in April 2015 for possession of a controlled substance; and (4) an arrest in August 2015 for possession of a controlled substance.

On September 27, 2016, the juvenile court found that a prima facie showing had been made that the minor came within section 300. It ordered the minor detained and that temporary placement be vested with the Department and ordered supervised visitation of at least three times per week for parents.

B. Jurisdiction/Disposition Report and Hearing (November 2016)

In its October 2016 jurisdiction/disposition report, the Department advised that the minor had been discharged from the hospital on October 1, 2016, and he had been placed with a foster family, D.C. and B.C, where he appeared to be adjusting "with no observable mental or emotional changes." Despite having been born drug-exposed, there were no medical or developmental concerns as of the time of the Department's report.

Mother, after testing positive for drugs on September 20 and 21, 2016, had 12 negative blood tests between September 23 and October 19. After the minor's

[3] Mother reported to the Department in the present dependency proceeding that she had used methamphetamine as a teenager, but that she had been "sober for 17 years, until April 2015 [*sic*] because she lost custody of her oldest child, [C.K.]."

discharge from the hospital, father and mother jointly visited him under supervision on nine occasions between October 4 and October 21.

On November 1, 2016, the court sustained the allegations of the amended petition, and it declared the minor to be a dependent of the court in out-of-home placement. The court ordered that family reunification services be provided to parents, and it ordered supervised visitation for both mother and father a minimum of three times per week. It further ordered that mother submit to a psychological evaluation.

C. De Facto Parent Status Request (March 2017)

In March 2017, D.C. and B.C. filed a request to be appointed the minor's de facto parents. They explained that they had been the minor's caregivers for the five months since his release from the hospital. B.C. worked full time and D.C. stayed home full time with the baby, allowing her to care for him, to work on his in-home occupational therapy exercises, and to take him to appointments. B.C. and D.C. stated they "would whole-heartedly welcome [the minor] if adoption [became] an option."

D. Six-Month Review Report, Hearing and Order (April 2017)

1. *Department's Report*

On March 30, 2017, the Department reported that although parents had "completed a few of their case plan activities, there ha[d] been a lack of follow[-]through with crucial aspects such as substance abuse testing, treatment and individual counseling. [Parents had] also missed a significant [number] of visits with their son throughout this reporting period."

Mother had been referred to Janus Perinatal for her substance abuse issues and had completed the three-month program on December 20, 2016. Thereafter, mother declined the Department's suggestion that she enroll in a sober living environment because she did not want to leave father homeless by himself. Mother advised the Department that she would enroll in Sobriety Works as an outpatient, but had failed to do so. In February 2017, mother again advised the Department that she intended to enroll at Sobriety Works;

although she and father had a scheduled intake date thereafter, they did not follow through with it.

Mother drug-tested negative during her stay at Janus Perinatal from September 20 to December 20, 2016. After leaving Janus Perinatal, she was referred to Doctors on Duty for follow-up drug testing, but she had not gone forward with such testing.

It was reported that in October 2016, mother was referred to La Manzana Community Resources. Mother completed a four-week intensive early parenting education class. Mother had also been participating regularly in the Leaps and Bounds program.

Mother had submitted to an evaluation by Deborah Vitullo, Clinical Psychologist, on December 16, 2016. Dr. Vitullo recommended that mother receive drug and alcohol treatment and testing, as well as "individual therapy focused on underlying characterological/personality disorder issues."

The Department reported that parents had visited fairly consistently with the minor up until January 4, 2017. Parents either no-showed or cancelled on 10 occasions between January 4 and February 27, 2017.

The Department reported that the minor was healthy and had appeared to adjust well to his foster home. The foster home was reportedly a concurrent home.

2. *Six-Month Review Hearing*

The court conducted a six-month review hearing on April 18, 2017. Neither father nor mother appeared at the hearing. The court ordered family reunification to continue, cautioning that if parents failed to participate in any court-ordered treatment program or failed to cooperate or use services provided in the case plan, services might be terminated. The court granted the prior request of D.C. and B.C. and found them de facto parents of the minor.

E. 12-Month Review Report, Hearing and Order (November 2017)

1. *Department's Report*

In its report filed September 26, 2017, the Department advised that mother and father were not at the time an intact couple and that "[i]n the past, their codependence ha[d] stunted their ability to prioritize their child and follow through with their case plan activities." Mother had separated from father in April 2017 and had moved into a sober living environment. She had contact with father in June and had relapsed for two days. She returned to her sober living home after having tested clean, and she reported that she had not had contact with father since her June relapse. Mother completed the Intensive Outpatient Program on September 5, 2017, and had been attending the Aftercare Program each Monday. She also attended 12-step meetings and Codependency Anonymous meetings.

After entering the sober living environment on April 26, 2017, mother had tested negative for all substances, except for the period of her June relapse. She had 28 negative tests between April 30 and August 5, 2017, with one positive test for methamphetamine on June 25.

After mother completed a psychological evaluation in December 2016 and after Dr. Vitullo sent her report to the Department in January 2017, mother was referred to the Parents Center for individual counseling. After being referred to a private therapist, Katherine Zwick, and after missing two appointments, mother met with Ms. Zwick on June 19 and on five subsequent occasions.

The Department reported that mother had met weekly with a social worker from Families in Transition since early June 2017 and that she continued to work on her parenting skills through the Leaps and Bounds organization. The Children's Services coordinator reported that mother was "very intelligent and [made] good connections between concepts regarding early childhood development [and] . . . respond[ed] quickly to new information and direction."

Until late April 2017, mother and father visited the minor together but missed many visits. Because mother did not confirm her appointment two hours before the scheduled visit, she was considered a no-show on eight occasions between May 8 and July 18, 2017. She was also reported to have had "challenges with regulating herself in visits and prioritizing her son's needs." She became consistent with her visits in late July 2017 and was able to transition in late August to loosely supervised visits. The Department reported that mother had "worked hard to attune to her child's needs and continue[d] to arrive to visits on time, prepared with all of the necessary items for the child and open to feedback from the visit supervisor regarding the child's needs."

The Department reported that the minor was living in a concurrent foster home. It was apparent that he had "adjusted well to his current foster home with no observable mental or emotional challenges. . . . [The foster mother reported] that [the minor] often struggle[d] transitioning from visits back to his regular schedule."

The Department concluded that although mother had made "great strides with her services and visitation," it had been a slow process and it was "unable to confidently report that the child can safely be returned to her care at this time." It stated that notwithstanding mother's progress, it could not be determined whether the positive "changes [could] be sustained by [mother] over time and the safety risks to the child mitigated." The Department therefore recommended that services to mother and father be terminated and that the court set a selection and implementation hearing pursuant to section 366.26 .

2. *Caregiver Report*

De facto parents reported that the minor was healthy overall and had a healthy appetite. He had progressed in occupational therapy and was scheduled for a final review in October 2017. The minor's parents had attended only one of his medical appointments in the prior six months and had not attended any occupational therapy sessions between January and June 2017.

De facto parents advised that the minor recognized both parents and was "agreeable" when he was left for visits. But, de facto parents reported, the minor "has reacted very negatively to nearly all of his visits over the last 6+ months. . . . [The minor] acts like a totally different child on visit days than on non-visit days. His reactions to visits have gotten worse as time goes by rather than improving." (Original underscoring.)

De facto parents requested that reunification services be terminated and that they be given consideration as the permanent home for the minor.

3. *12-Month Review Hearing*

At the November 7 hearing previously scheduled as a settlement conference preceding the 12-month review hearing (set for November 13), the Department advised the court that it had changed its recommendation, concluding that, based upon mother's performance over the prior six months with respect to substance abuse treatment, testing, family counseling, and visitation, she should continue to receive reunification services. The Department reiterated its recommendation that father's services be terminated, and father agreed to submit the matter. De facto parents opposed the Department's recommendation that mother receive additional services.

The court ordered that mother continue to receive services, finding she had made substantial progress in mitigating the causes and concerns that resulted in the minor's removal and that "the additional evidence concerning mother's sobriety . . . [was] very convincing." The court terminated father's services, finding that he had made minimal progress in his case plan. The court determined that return of the minor to parents would create a substantial risk of detriment to his safety, protection, or physical or emotional well-being; found by clear and convincing evidence that parents had been provided reasonable services to mitigate the concerns that brought the minor to the Department 's attention; and concluded there was a substantial probability the minor could be returned to mother within the next six-month period, i.e., prior to the 18-month hearing. The

minor would thus remain a dependent child placed in out-of-home care placed with de facto parents. The court ordered that father receive supervised visitation of the minor every three weeks, and that mother receive supervised visitation three times per week.[4]

F. Eighteen-Month Review Hearing (April 2018)

1. *Reports*

The Department advised the court—in a report filed on April 6, 2018, and in a later addendum—that after a Team Decision Meeting on February 13, 2018, the Department had increased mother's unsupervised visits and had permitted several overnight visits in March 2018. The minor was involved in an extended visit with mother that had commenced on March 27, 2018. It reported that mother had "continue[d] to make progress towards meeting her case plan objectives which include: complying with all court orders, developing a positive support system with friends and family, showing she knows age appropriate behavior for her son, staying free from illegal drug use and living free from drug dependency, and obtaining and maintaining a stable and suitable residence for herself and her son . . . . [Mother] continues to participate in her case plan activities which include: individual therapy . . . , parenting education, drug testing, and Family Preservation Court attendance." Mother reported that she had been clean and sober since June 21, 2017. She had tested negative for all substances on a number of occasions after a relapse in June 2017, including recent testing on March 28, April 3, and April 10, 2018. Mother had also located and moved into her own apartment in March 2018.

The social worker, Carmen Carlos, reported that she had made unannounced visits of mother and the minor at the Sober Living Environment house, at the Rebele Family

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[4] The de facto mother, D.C., appealed the order after the 12-month review hearing in which the court ordered that mother continue to receive services. On June 28, 2018, this court dismissed the appeal on the ground that the controversy was moot. (*In re D.L., supra,* H045306.)

Shelter, and in mother's new home in Watsonville. Carlos concluded that the minor was cared for well, he appeared to be happy and healthy, and mother was attendant to his needs. From the visits to the new home, Carlos also observed that the home was clean, organized, and stocked with food.

The Department recommended that the minor remain a dependent child and that he be returned to mother's care with family maintenance services offered to mother.

De facto parents, D.C. and B.C., submitted a caregiver information form in April 2018. They expressed apprehension that the health and safety of the minor under mother's care were still significant concerns, arguing that the Department was "*still* unsure if the birth mother is a safe placement." (Original italics.) D.C. and B.C. noted that mother had failed to attend the minor's scheduled 18-month well-child care and immunization appointment despite de facto parents' having given mother two reminders on separate occasions. De facto parents recommended that the court terminate mother's services and schedule a 366.26 hearing.

Lois Santero, a representative of the Court Appointed Special Advocates of Santa Cruz County (CASA), submitted a report in April 2018. She noted that a representative of the Leaps and Bounds organization reported positively on March 19, 2018, concerning mother's relationship with the minor and that mother had made progress in learning appropriate parenting. Santero stated that the increased time spent by the minor with mother had been difficult for him and that D.C. and B.C. had indicated "concerns about [the minor] getting enough food, naps, his health (they report he often smelled of cigarettes), and his safety – when they witnessed him being held to his Mom's chest without a helmet while she was riding a bike."

Santero noted and opined that the minor had "lived in his concurrent resource home [with D.C. and B.C.] since the release from the NICU. It was a very positive environment for him, rich with love and dedication to meeting his needs. It is the only family he knew at that time." Santero stated that she and her supervisor were invited to

a Team Decision Meeting on February 16, 2018, to discuss proposed overnight visits. At the beginning of the meeting, mother stated she did not want CASA involved; Santero and her supervisor were dismissed from the meeting. Mother thereafter declined contact with Santero and asked that she be dismissed from the case. Based upon her involvement in the case, it was Santero's recommendation that (1) family reunification be terminated, (2) the minor remain in his current foster placement, (3) the case should proceed toward adoption, and (4) mother continue to have visitation that was supervised.

2. *Hearing*

The court conducted the eighteen-month review hearing on April 19, 2018. It adopted the Department's recommendations. It ordered the minor to continue as a dependent child of the court. The court found that the risk had been reduced to a level that permitted the minor to be returned to mother's care and ordered such return, and it ordered that family maintenance services for mother commence. The court scheduled a six-month family maintenance review hearing for October 2, 2018.

G. Petition (§ 387) and Hearing (October 2018)

1. *Petition Under Section 387*

On September 7, 2018, the Department filed a supplemental petition pursuant to section 387, subdivision (a).[5] The Department alleged that on September 5, the minor was placed into protective custody by the Capitola Police Department after mother's arrest on charges of willful cruelty to a child (Pen. Code, § 273a, subd. (a)).

According to the police report attached to the supplemental petition, police were dispatched on September 5 at 9:00 p.m. based upon a report of a woman possibly under the influence carrying a small child. Upon arriving at the scene, the police were told by a witness that the woman with a small child had asked to use a phone and said that "she

[5] "An order changing or modifying a previous order by removing a child from the physical custody of a parent . . . and directing placement in a foster home . . . shall be made only after noticed hearing upon a supplemental petition." (§ 387, subd. (a).)

was running from CPS." Officers located the woman, later identified as mother, exiting a movie theater with a small child in her arms. Upon mother's encountering the police, she quickly turned around and reentered the theater. Officer Zamon pursued mother, who entered one of the interior theaters. As Officer Zamon followed mother, she ran down the stairs, ultimately tripping and falling with the minor in her arms. The officer asked mother to place the child on a seat; mother refused, and after attempting to pull away, Officer Zamon handcuffed her right wrist. Mother ultimately placed the minor, who was crying and very wet, in a seat. Mother's clothing was also very wet, and she claimed it was wet because she had been running. Mother "was very emotional during [Officer Zamora's] contact with her and stated she was sorry she had used again and relapsed." Mother admitted to the police that she had relapsed on September 4 "on 'a large amount of methamphetamine.' " Police reported that "they suspected the mother had also used [on September 5] or had used such a large amount of methamphetamine that she was still actively showing signs of being loaded." Mother also advised the police that she had "recently lost her housing and . . . she cannot care for [the minor]." Mother was taken into custody and she was transported to county jail and booked.

According to the Department's investigative narrative report, Supervising Social Worker Emily Simoni arrived at the theater on the evening of September 5. Simoni found the minor playing hide and seek with the police officers on the scene; after losing interest in the game, he asked to be held by mother. After mother began holding the minor, he slapped her and he started crying and "was inconsolable." Mother "begged" Simoni to allow the minor to stay in mother's care. Mother repeatedly told Simoni, " 'I am such an asshole; how could I do this?' "

On September 6, Social Worker Jeremy Lansing and a social work intern interviewed mother at the jail. Mother presented as very sad and dejected and had visible open scabs on her face. She "[a]ppeared highly agitated as evidenced by frequent head jerks and frantic hand movements." Mother said that she had not slept in two days. She

told the social workers that she had "snorted" unspecified drugs earlier in the week (later clarifying that she had done so on September 4), and had informed her sponsor and a roommate that she had relapsed. The roommate stayed with mother and the minor while mother "was coming down from using." On September 5, the roommate kicked mother out of the apartment on short notice "because of the friends the mother had at the home." In the interview with the social workers, mother blamed her roommate for her situation. After she was informed of the minor's placement, mother "[e]scalated." She became combative and abusive—"[s]cream[ing], 'You fucking fag, fuck you, fuck you!!' " and " 'I'm not talking to you' "—struck the walls and the window, and "flipped off [the] Social Workers while screaming profanity." Correctional officers then instructed the social workers to leave.

The Department recommended that the minor be placed in foster care.

After a detention hearing on September 10, 2018, the court found that a prima facie showing had been made in the supplemental petition that the prior disposition of placement of the minor in mother's care with family maintenance was not effective in protecting the minor. The court found that continued placement in mother's care was contrary to the minor's welfare and there was substantial danger to the physical health of the child. It ordered that the minor be placed with the Department.

2. *Adjudication Report on Supplemental Petition and Addendum*

The Department submitted its adjudication report in anticipation of the hearing on the supplemental petition, advising that upon his being placed into protective custody, the minor was placed with D.C. and B.C., a concurrent placement where he had lived from September 2016 (when he was discharged from the hospital) to April 2018. D.C. reported that on the minor's first night back in de facto parents' home, he toured the house looking for his old toys and looking at pictures of himself. D.C. felt that the minor had lost weight over the past few months because his clothing was too big for him and he appeared " 'gaunt and skinny.' " There was a younger foster child, a girl, in the

household; D.C. stated that the relationship between the two children was good and that the minor was " 'gentle and caring' towards her." D.C. advised the Department that the minor had "developed several new 'swear words' into his vocabulary and [D.C. was] working with him on using more appropriate words to describe things." In the first few days after returning to the foster placement, the minor complained that he had fallen and "had 'hurt [his] head.' " D.C. took the minor to his primary care physician for a two-year developmental checkup and no concerns were raised about the minor's health.

In its report, the Department noted that, after the incident resulting in the minor's detention on September 5, 2018, mother had attended all scheduled supervised visits with the minor. The visits were initially " 'rough' " for the minor and it was necessary for the visit supervisor to hold the minor for most of the first visit. The minor was reportedly " 'withdrawn' during visits," but mother was " 'appropriate during visits' " and "ha[d] been 'good at following suggestions and allowing [the minor] to lead the visits.' " D.C. advised the Department that the minor "is struggling with [the] visits and is confused about who his 'mommy' is." D.C. said that after the visits, the minor was "exhausted . . . often fall[ing] asleep or go[ing] into 'zombie mood.' " D.C. stated that she was working with the minor to make the visits positive experiences, such as having him pick out snacks for the visits and assuring him that the visits would be safe and fun.

The Department noted that it had made several attempts to meet with mother. She initially responded that she wanted to speak to her attorney before meeting. She later advised that she wanted to reschedule the meeting to a later date. And when the social worker called mother to reschedule an appointment, she did not hear back from mother.

The Department observed that mother had apparently safely parented the minor after his return to her care until her arrest on September 5, 2018. It acknowledged that mother "ha[d] made significant strides during this dependency case and continue[d] to verbalize her love and desire to care for her son." But the minor had not been in mother's care for 20 of the 24 months of his life and he was "now at an age where he is far more

aware of the circumstances of his life than during his prior placement." The Department expressed concern "that after two years of services, [the minor] still [did] not have a stable or permanent plan that provide[d] he [would] be cared for in a safe and consistent manner by either of his parents." The Department opined that out-of-home placement was necessary to keep the minor safe. The Department recommended that mother not be offered reunification services and that a 366.26 hearing be scheduled to determine a permanent plan for the minor.

In an addendum report, the Department advised that it had made efforts to contact relatives, including two paternal aunts, the maternal grandmother, and the father of the minor's half-sister. The maternal grandmother expressed interest in the minor being placed with her but was uncertain whether she wished to care for him permanently.

3. *Hearing on Supplemental Petition (§ 387)*

A contested hearing on the supplemental petition occurred on October 31, 2018. The Department submitted the matter upon the adjudication report and the attachments thereto, an addendum report, and the prior documents filed in the proceedings. Mother presented documentary evidence as well as the testimony of mother.

Mother testified that she had relapsed and had "asked someone from [her] sober support network to be with [her] and [her] son. Unfortunately it was not one of [her] dependable people [she had] known for the two year of [her] recovery" and "[the support person] called the police." Mother stated that after her relapse and incarceration, she had called sober support after her release and had attended a meeting. She was admitted into Janus Perinatal a few days later, and she later transitioned into Evolving Door Sober Living Environment (Evolving Door). As of the time of the hearing, she had been with Evolving Door for 47 days. The program was one which permitted children in residence. Mother was in regular contact with her sponsor, and at the outset, she had attended three to four meetings daily. At the time of the hearing, she was attending two to three

meetings daily. Mother was also participating in counseling and in the family preservation court program.

Mother also testified that she attended visits with the minor three times per week and had not missed any visits. Mother brought toys and snacks during the visits and read to him. The minor referred to mother as "[m]ommy and momma" during the visits.

Mother asked the court to return the minor to her care at Evolving Door. She testified that she was working (with two small cleaning jobs), had "a small amount of income," and that Evolving Door was "a very supportive environment" in which there was available day care. Mother requested that the court return her son to her because she loved him "[a]nd because he needs his mother."

On cross-examination, mother admitted that she had relapsed twice during the period she had received reunification services and prior to the minor being returned to her care. She knew that part of her safety plan was to contact individuals before relapsing. Mother testified that she had contacted her sponsor before she relapsed in September 2018 but that they had been unable to meet. She admitted she had not tried to contact alternative people who could help her before she relapsed, such as child protective services, the assigned social worker, Janus Perinatal program, Eva Gomez (a substance abuse disorder specialist), or Campos from family preservation court. Mother also admitted that by relapsing, she had not kept the minor safe, and that by running while holding her son to evade the police, she had placed her son at further risk. She testified that what she had done was "completely irrational" and dangerous.[6]

[6] Father testified on his own behalf. He requested that the minor be returned to his care. Father testified that he had a sister living in Arizona who owned a home; he stated that the sister was willing and able to have father and the minor live with her and to employ father in her business. He testified that he could be a sober parent, and that he had been clean and sober for approximately three to four months. The social worker who prepared the adjudication report testified that the Department had sent a Resource Family Appoval packet and relative notification to father's sister on September 21, 2018, but had

Mother submitted a number of exhibits in support of her contention that the minor should be returned to her custody and care. The exhibits included (1) sign-up sheets showing her attendance at meetings; (2) two letters attesting to mother's good character and fitness as a mother; (3) a letter from a representative of Bringing Families Home stating that, as mother's case manager for five months, mother had "show[n] incredible initiative in her search for a better life for both herself and her son . . . and ha[d] taken steps towards achieving her goals of being financially independent and housed in a safe environment for her and her son"; (4) an October 2018 letter from mother's therapist, Zwick, indicating that she had "[r]ecently . . . added Posttraumatic Stress Disorder, Unspecified, to [mother's] diagnostic picture," based upon trauma mother had reported relating to her loss of custody of her daughter four and one-half years prior, the birth and immediate loss of custody of the minor two years prior, and "repeated traumas in [mother's] childhood related to growing up in a family system in which addiction, abandonment, neglect, and abuse played a significant role"; (5) written communications from mother, including ones addressed to the court, concerning her desire to have the minor returned to her custody and care; (6) supervised visit logs showing mother's regular visitation with the minor between September 18 and October 12, 2018; (7) supervised visit logs showing father's visitation with the minor between October 1 and 12, 2018; and (8) a letter from a Janus counselor, confirming mother's participation in the Perinatal Residential Treatment Program from September 13, 2018, until stepping down to a lower level of care on October 19, 2018.

After hearing argument, the court sustained the allegations of the supplemental petition. Adopting its tentative ruling, the court found the allegations in the supplemental petition true. It noted that mother had admitted she had taken methamphetamine on

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not received a response back from her, and the Department therefore had "no way of knowing whether or not the sister is available or interested in placement of [the minor]."

September 4, 2018, and it was undisputed that the minor was placed into protective custody on September 5 when mother was arrested for child endangerment at a time when she was under the influence of controlled substances. The court further found the allegations true that mother had fled from law enforcement and had tripped and fallen down stairs while carrying the minor; she had been sweating profusely, causing the minor's clothing to become saturated; she had shown volatile and paranoid behavior as a result of her drug use; and such use of controlled substances had negatively affected her ability to safely care for the minor. The court also found true the allegation that father had received reunification services that were terminated in November 2017 based upon father's having made minimal progress with respect to his court-ordered case plan. It found that although father testified he had been clean and sober for three months, this was an inadequate period of time for the court to have confidence that father had mitigated the issues that had initially led to the dependency proceeding.

The court made additional findings in support of its disposition order, including (1) the minor was originally detained on September 27, 2016; (2) the court signed the jurisdiction order and disposition order of removal on November 1, 2016, which included provision for reunification services; (3) father received 12 months of services, which were terminated on November 7, 2017; (4) mother received 18 months of services, with the minor being placed with mother on April 19, 2018, with family maintenance services; (5) more than 12 months had elapsed since the minor entered foster care; (6) more than 24 months had elapsed since the minor's physical removal; (7) reasonable efforts had been made to prevent or eliminate the need for the minor's removal from the parents' care; (8) an award of custody to either parent would be detrimental to the minor; and (9) by clear and convincing evidence, it was necessary for the minor's welfare that he be removed from mother's physical custody, because there was substantial danger to the minor's physical health, safety, protection, or physical or emotional well-being if the minor were returned to the home and there were no reasonable means of protecting the

minor without such removal. Accordingly, the court ordered that the minor be removed from mother's physical custody and that he remain a dependent of the court under the care, custody, and control of the Department for supervision. It ordered further that no family reunification services be provided, mother and father receive monthly supervised visitation, and the 366.26 hearing be set for January 29, 2019.

H. Petition for Extraordinary Writ

Mother filed timely under rule 8.450(e) of the California Rules of Court[7] a notice of intent to file a petition for extraordinary writ to review the court's order of October 31, 2018, terminating services. After applying for and receiving an extension of time to file a petition, and after failing to timely file such petition, mother, after leave to file a late petition was granted filed her petition for extraordinary writ (hereafter writ petition) with this court on January 8, 2019. (See rule 8.452.)[8] Real party in interest Department filed its opposition on January 16, 2019.

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[7] All further rule references are to the California Rules of Court.

[8] The writ petition filed by mother, using Judicial Council Form JV-825, is a most conclusory and perfunctory presentation that is noncompliant and unhelpful to this court. Although a petition to review an order setting a 366.26 hearing is to be liberally construed (rule 8.452(a)(1)), "litigants must not be misled by the brevity of form No. JV-825 into assuming that normal rules for writ petitions do not apply." (*Rayna R. v. Superior Court* (1993) 20 Cal.App.4th 1398, 1407.) "Litigants seriously seeking relief by extraordinary writ must present a comprehensive statement of the facts and procedures and points and authorities. [Citations.]" (*Ibid.*; see also rule 8.452(a)(3) [petition "must be accompanied by a memorandum"].) The petition here contains no such comprehensive statement. Rather, it contains (1) a six-sentence statement of the grounds for claiming that the court's order was erroneous; and (2) an eight-sentence summary of the factual basis for the petition with no references to the reporter's transcript. Mother has also failed to comply with rule 8.452(b) because she has not accompanied the petition with *any* memorandum (as specified in the rule and as noted in the JV-825 form), let alone a memorandum setting forth, inter alia, a summary of significant facts and arguing each point with appropriate citations to the record and legal authority. "[W]e are not required to do the petitioner's work and expend judicial resources on a petition which does not meet the threshold requirements of the statute and rule." (*Anthony D. v. Superior Court* (1998) 63 Cal.App.4th 149, 157.) A noncompliant writ petition not only

II. DISCUSSION

A. Applicable Legal Principles

1. *Dependency Law Generally*

Section 300 et seq. provides "a comprehensive statutory scheme establishing procedures for the juvenile court to follow when and after a child is removed from the home for the child's welfare. [Citations.]" (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) As our high court has explained, "The objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time. [Citations.] Although a parent's interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect. [Citations.] The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with

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creates additional burdens for the reviewing court; by requiring the court to "comb[] the record in search of error. . . [, such] default . . . also tends subtly to alter the institutional role of the court as neutral arbiter." (*Nahid H. v. Superior Court* (1997) 53 Cal.App.4th (continued)
1051, 1056 (*Nahid H.*).)

A petitioner's failure in a juvenile writ petition to include, inter alia, the petition's factual bases, the facts relating to the alleged error, and an attached points and authorities may result in the appellate court summarily dismissing or denying the petition. (See, e.g., *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 584 [First District Court of Appeal announces rule that it would summarily deny noncompliant juvenile writ petitions that did not include a summary of its factual basis or required points and authorities]; *Cheryl S. v. Superior Court* (1996) 51 Cal.App.4th 1000, 1005 [Second District Court of Appeal cautioning that future inadequate juvenile writ petitions will be dismissed without consideration of their merits].) Because of the importance of the rights of petitioner (mother) that are affected by the challenged order, however, we will decline to summarily deny or dismiss her petition, and we will consider its merits. (See *Nahid H.*, *supra*, 53 Cal.App.4th at p. 1056.)

their parents have been unsuccessful. [Citations.] This interest is a compelling one. [Citation.]" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

The court at the jurisdictional hearing must first determine whether the child, by a preponderance of the evidence, is a person described under section 300 as coming within the court's jurisdiction. (§ 355, subd. (a).) Once such a finding has been made, the court, at a dispositional hearing, must hear evidence to decide the child's disposition, i.e., whether he or she will remain in, or be removed from, the home, and the nature and extent of any limitations that will be placed upon the parents' control over the child, including educational or developmental decisions. (§ 361, subd. (a).) If at the dispositional hearing, the court determines that removal of the child from the custody of the parent or guardian is appropriate, such removal order must be based upon clear and convincing evidence establishing that one of five statutory circumstances exists. (*Id*., subd. (c).) One such circumstance is the existence of substantial danger to the dependent child's "physical health, safety, protection, or physical or emotional well-being" were he or she returned to the home. (*Id*., subd. (c)(1).)

After it has been adjudicated that a child is a dependent of the juvenile court, the exclusive procedure for establishing the permanent plan for the child is the selection and implementation hearing as provided under section 366.26. The essential purpose of the hearing is for the court "to provide stable, permanent homes for these children." (*Id*., subd. (b); see *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1797.)

Prior to the permanency hearing, there are periodic status reviews as ordered by the court, but not less frequently than every six months. (§ 366, subd. (a)(1).) "Review hearings are critical because they are the point at which a parent may be denied further reunification services. [Citation.]" (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 61.)

2. *Family Reunification Services*

When the dependent child is removed from parental custody, the juvenile court is ordinarily required to provide the parent with services to facilitate the reunification of the

family. (§ 361.5, subd. (a); see *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 303.) "The focus during the reunification period is to preserve the family whenever possible. [Citation.] Until services are terminated, family reunification is the goal and the parent is entitled to every presumption in favor of returning the child to parental custody. [Citations.]" (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1423.)

If reunification services are ordered, they generally (subject to exceptions and instances in which the period may be extended) begin with the dispositional hearing and, for children three years or older, end 12 months thereafter. (§ 361.5, subd. (a)(1)(A).) But where a child is under three years at the time of his or her initial removal (*id.*, subd. (a)(1)(B)), reunification services are normally terminated after six months. (See *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1009, fn. 4.)

As the California Supreme Court has explained, for parents of a child under three at the time of removal, the statutory scheme of providing reunification services establishes "three distinct periods and three corresponding distinct escalating standards." (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 845 (*Tonya M.*).) In the first period—a phase where services are "presumed"—from the jurisdictional hearing to the six-month review hearing, "services are afforded essentially as a matter of right [citation]." (*Ibid.*) In the second period—a phase where services are "possible"—from the six-month review hearing to the 12-month review hearing, "a heightened showing is required to continue services." (*Ibid.*) And in the third period—a phase where services are "disfavored"—from the 12-month review hearing to the 18-month review hearing, "services are available only if the juvenile court finds specifically that the parent has 'consistently and regularly contacted and visited with the child,' made 'significant progress' on the problems that led to removal, and 'demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.' [Citation.]" (*Ibid.*; see also *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 175-176.)

3. *Supplemental Petitions Under Section 387*

The petition before us challenges the juvenile court's order made after a contested hearing on the Department's supplemental petition brought under section 387, subdivision (a). Such a petition must be utilized if the agency has concluded "that a previous disposition has not been effective in the protection of a child declared a dependent under section 300 and seeks a more restrictive level of physical custody." (Rule 5.560(c).) As explained by one court, "Under section 387, child protective services may bring a supplemental petition for an order changing or modifying a previous order by removing a child from the physical custody of a parent. (§ 387, subd. (a).) The petition must contain a statement of facts 'sufficient to support the conclusion that the previous disposition has not been effective.' (§ 387, subd. (b).)" (*In re Javier G.* (2005) 130 Cal.App.4th 1195, 1200.)

A hearing on a section 387 supplemental petition involves potentially two phases that mirror a hearing on a section 300 petition, namely, a so-called jurisdictional phase and (if the allegations are found true) a dispositional phase. (*In re Javier G.*, *supra*, 130 Cal.App.4th at p. 1200.) In the first phase of a hearing on a section 387 petition, "[t]he ultimate 'jurisdictional fact' necessary to modify a previous placement with a parent or relative is that the previous disposition has not been effective in the protection of the minor." (*In re Jonique W.* (1994) 26 Cal.App.4th 685, 691.) In that first phase, "the court must follow the procedures relating to a jurisdictional hearing on a section 300 petition, as set forth in [former] rules 1449 through 1452. [Citation.][9] At the conclusion of this [first phase] . . . , the juvenile court is required to make findings whether: (1) the factual allegations of the supplemental petition are or are not true; and (2) the allegation that the previous disposition has not been effective in protecting the child is, or is not, true.

[9] The successors to former rules 1449 through 1452 are current rules 5.682 through 5.688.

[Citation.]" (*Ibid.*; see also rule 5.565(e)(1).) The agency must prove the jurisdictional facts by a preponderance of the evidence. (*In re Jonique W.*, *supra*, at p. 691.)

If the juvenile court finds both allegations in the jurisdictional phase true, it then proceeds with the dispositional phase, which "must be conducted under the procedures applicable to the original disposition hearing. . . . [Citation.]" (*In re Jonique W.*, *supra*, 26 Cal.App.4th at p. 691; see also rule 5.565(e)(2).) As such, the court may not order the removal of the child "unless it finds by clear and convincing evidence '[t]here is substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home,' and there are no alternative reasonable means to protect the minor, or the 'minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others,' and there are no reasonable alternative means to protect the minor. (§ 361, subd. (c)(1) & (3); [citation].)" (*In re Javier G.*, *supra*, 130 Cal.App.4th at pp. 1200-1201; but see *In re A.O.* (2010) 185 Cal.App.4th 103, 111-112 [questioning applicability of clear and convincing evidence standard's application to juvenile court's findings on a § 387 petition where there was a prior determination under § 361, subd. (c)(1) in the dependency case].)

4. *Standard of Review*

An appellate court reviews the jurisdictional and dispositional findings of the juvenile court on a supplemental petition under section 387 for substantial evidence. (*In re F.S.* (2016) 243 Cal.App.4th 799, 811-812; *In re T.W.* (2013) 214 Cal.App.4th 1154, 1161-1162.) "Evidence is ' "[s]ubstantial" ' if it is ' " 'reasonable, credible, and of solid value.' " ' [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record in favor of the juvenile court's order and affirm the order even if other evidence supports a contrary finding. [Citations.] The

appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. [Citation.]" (*In re T.W.*, *supra*, at pp. 1161-1162.)

" ' "The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' [Citation.]" (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881 (*Sheila S.*).) And the juvenile court's order is presumed to be correct. (*In re Julian R.* (2009) 47 Cal.4th 487, 498-499 [juvenile court order presumed correct; appellant has burden to demonstrate error].)

B. No Error in Order on Supplemental Petition

1. *Substantial Evidence Supports Jurisdictional Findings*

As noted, in considering the supplemental petition under section 387, the trial court was required to first, as a jurisdictional matter, determine whether the Department had established by a preponderance of the evidence the truth of (1) the allegations of fact in the supplemental petition, and (2) the allegation that the previous disposition had not been effective in protecting the child. (*In re Jonique W.*, *supra*, 26 Cal.App.4th at p. 691.)

Substantial evidence supported the juvenile court's conclusion that the factual allegations of the supplemental petition were true. Indeed, mother in her writ petition neither contests the truth of the supplemental petition's factual allegations nor specifically argues that the court's findings concerning them were not based upon substantial evidence. The essential facts alleged—which were mostly undisputed at the hearing—were that (1) on September 4, 2018, mother consumed a large quantity of

methamphetamine at a time when she was the minor's sole caregiver; (2) mother exhibited "volatile behavior[,] including acting erratically and paranoid while holding her son[on September 5], prompting several community members to alert law enforcement"; (3) mother, while under the influence of a controlled substance, ran from law enforcement with the minor in her arms, tripping and falling down some stairs; (4) the minor's clothing at the time was saturated because mother had been sweating profusely; (5) the minor was placed into protective custody by Capitola police officers after mother's arrest for willful cruelty to a child; and (6) mother's controlled substance abuse negatively impacted her ability to safely care for her son. The only fact that mother disputed was whether she in fact tripped and fell while running down the stairs of the theater to evade the police. While her testimony was that she "sat down at the bottom of the theater by the seats. . . [as her] way of giving up," the court did not find the explanation credible and instead concluded the evidence supported the Department's allegation of fact. (*In re T.W.*, *supra*, 214 Cal.App.4th at pp. 1161-1162 [appellate court does not weigh evidence or resolve witness credibility issues in assessing whether substantial evidence supports juvenile court's findings].)

The Department stated in its adjudication report prepared in connection with the hearing on the supplemental petition under section 387 that it "ha[d] made extensive referrals, including counseling, substance abuse treatment, drug and alcohol testing, mental health services to include a psychological evaluation[,] to assist the mother with engaging in services since 09/27/2016, when [the minor] was placed in protective custody. The Department offered the mother family reunification services for a period of over [17] months from 11/01/2016 through 04/17/2018. The Department offered family maintenance services from 04/17/2018 until 09/10/2018 when [the minor] was again detained by the Court. Although the mother participated in her case plan activities and extensive services, she has been unable to maintain sobriety and parent [the minor]." After mother's last relapse in September 2018, "the Department determined that

reasonable efforts to safely keep [the minor] in the care of the mother had been exhausted." These statements by the Department—together with the facts presented in the entire history of this dependency proceeding which have been reviewed by this appellate court—support the allegation that the previous disposition of allowing the minor to be in the custody and care of mother with family maintenance services had not been effective in protecting the child. (See *In re Jonique W.*, *supra*, 26 Cal.App.4th at p. 691.)

Mother in her writ petition provides no argument that specifically attacks this finding by the court. But the following statements by her, liberally construed, may be viewed as a challenge to the finding that the previous disposition of the minor in mother's care had not been effective in protecting the minor: (1) she had shown herself to be a good mother who had provided love and financial security to the minor; (2) she had continued to address her substance abuse issues "by maintaining sobriety"; (3) she had "exceeded the expectations of [her] case plan"; (4) she had "done all that was asked of [her] & more"; and (5) she "was sober 1 year & 4 months before this [one] 24[-]hour lapse." These statements by mother do not undercut the juvenile court's finding. The circumstances described by the Department and evident from the record—including mother's substantial drug dependency that preceded the minor's birth, her willingness to expose her fetus to toxic drugs throughout her pregnancy, her relapses from sobriety despite extensive reunification and family maintenance services provided to her for a total period of nearly 22 months, and the seriousness of the risk she placed upon the minor during her September 2018 relapse—provide substantial evidence to support the juvenile court's finding. Indeed, one critical factual element supporting the court's finding—that mother's actions posed significant safety issues for the minor—was admitted by mother. She directly stated in her testimony that her conduct on September 5, 2018, of relapsing and running while holding her son to evade the police were actions that were "completely irrational" and dangerous. There was substantial

evidence to support the juvenile court's finding that the previous disposition of placing the minor in mother's care with family maintenance services had not been effective to protect the minor.

2. *Substantial Evidence Supports Dispositional Findings*

In its dispositional order removing the minor from mother's custody, as applicable to this case, the juvenile court was required to "find[] by clear and convincing evidence [1] '[t]here is substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home,' and [2] there are no alternative reasonable means to protect the minor." (*In re Javier G.*, *supra*, 130 Cal.App.4th at p. 1200.) There was substantial evidence to support these findings by the juvenile court made by it on the basis of clear and convincing evidence. (See *Sheila S.*, *supra*, 84 Cal.App.4th at pp. 880-881.)

The substantial evidence that supports the two findings is overlapping and is also evidence supporting the two jurisdictional findings discussed, *ante*. That evidence includes (1) mother's history of abuse of controlled substances and criminal history; (2) father's history of abuse of controlled substances and criminal history; (3) mother's regular use of methamphetamines during her pregnancy and her use of methamphetamine and valium shortly before the minor's birth, thus placing an extreme risk of harm on her baby; (4) mother's history of a prior dependency involving her older child, C.K., including the circumstances leading to C.K.'s being declared a dependent child (i.e., mother's arrest, with C.K. unrestrained in the front seat of the car, for driving while intoxicated and child endangerment after consuming a large amount of alcohol and having taken Vicodin); (5) mother's having been provided court-ordered services in the prior dependency involving C.K.; (6) mother's having been arrested twice on drug possession charges in 2015, after the prior dependency proceedings had concluded; (7) the parents' reported "lack of follow[-]through" with crucial aspects of their case plan during the early period of the dependency (prior to the six-month review hearing); (8)

parents' poor visitation performance in January and February 2017; (9) mother's relapse in June 2017; (10) mother's exclusion of CASA representatives from a February 2018 team decision meeting and her lack of cooperation with CASA, a resource dedicated to promoting and protecting the welfare children involved in dependency proceedings; (11) mother's relapse of September 4, 2018, by using, by her admission, " 'a large amount of methamphetamine' " (12) the circumstances leading to her arrest on September 5, 2018 on charges of willful cruelty to a child, including her exhibiting volatile and paranoid behavior while being under the influence of methamphetamine, and her actions of endangering the minor by running away from the police with the minor in her arms that led to her tripping and falling in a Capitola theater; (13) mother's dealings with Department social workers after her relapse and incarceration, including her blaming of others for her situation, her abusive treatment of social workers on September 6, 2018, and her avoidance of social workers' requests for meetings later in the month; (14) father's inability to maintain sobriety throughout the dependency and his inability to demonstrate that he was able to provide a safe and stable living environment for the minor; and (15) mother's inability, despite nearly 18 months of reunification services and four months of family maintenance services, to maintain sobriety and establish that she could be viewed as a parent who could provide a stable and safe living environment for the minor for a sustained period of time.

Based upon the record before us, including the circumstances enumerated above, the juvenile court properly found on the basis of clear and convincing evidence that (1) the prospect of returning the minor to mother was fraught with substantial danger to the minor's physical health, safety, protection, or physical or emotional well-being, and (2) no alternative reasonable means were available to protect the minor. (*In re Javier G.*, *supra*, 130 Cal.App.4th at p. 1200.) "A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be

dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citation.]" (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on other grounds by *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

This court has considered the evidence presented by mother at the hearing on the supplemental petition. This includes matters favorable to mother, including her swift return to substance abuse treatment and counseling after her release from incarceration, her regular attendance at meetings to maintain her sobriety, and her regular visitation of the minor after his detention for a second time on September 5, 2018. We recognize that there are facts in the record preceding her latest relapse that point to mother's efforts throughout the dependency to achieve and maintain sobriety and stability. Those efforts are notable and are actions of which mother should be proud. And it is very apparent to this court that mother loves her son very much. Viewing the evidence, however, "in the light most favorable to the [juvenile] court's determinations and draw[ing] all reasonable inferences from the evidence to support [those] findings" (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689), we conclude there was substantial evidence supporting the court's findings that the Department established by clear and convincing evidence that "[1] '[t]here is substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home,' and [2] there are no alternative reasonable means to protect the minor." (*In re Javier G.*, *supra*, 130 Cal.App.4th at p. 1200.)[10]

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[10] In her writ petition, mother includes a request that the juvenile court be ordered to continue reunification services for mother. We may disregard this request, since it is unsupported by any discussion or citation of authority. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [conclusory presentation, without pertinent argument or an attempt to apply the law to the circumstances of this case, is inadequate and issue may be deemed abandoned].) Moreover, there is nothing in the record below suggesting that mother requested that she be provided additional reunification services. Any argument that the juvenile court erred by failing to provide mother additional services was thus

III. DISPOSITION

The petition for extraordinary writ is denied.

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forfeited. (See *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1347, fn. 5.) But even were we to consider the request, we find it lacks merit. Services after removal (continued)
of a child under three years old are generally limited to six months, but may be extended to a period of 12 months. (§ 361.5, subd. (a)(1)(B).) In atypical cases, a parent's services where the child is under three at the time of detention may be extended to up to 18 months. (§ 361.5, subd. (a)(3)(A); see *Tonya M.*, *supra*, 42 Cal.4th at p. 845 [services for parent of child under three are "disfavored" in third period between 12-month review hearing and 18-month review hearing].) Mother in this instance was provided with the maximum period of reunification services provided by statute, and no argument was presented below warranting the granting of additional services beyond the 18 months provided.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.

R.K. v. Superior Court
H046371